

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

JARED SERMON AND JAMIE) Case No. 2:09-cv-01597-JLR
SERMON,)
Plaintiffs,) **FIRST AMENDED COMPLAINT**
vs.)
IQ DATA INTERNATIONAL, INC.,) **JURY TRIAL DEMANDED**
Defendant.)

NATURE OF ACTION

1. This is an action brought under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, the Revised Code of Washington, Chapters 19.16, the Washington Fair Debt Collection Practices Act, and 19.86, the Washington Consumer Protection Act.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a).

3. Venue is proper before this Court pursuant to 28 U.S.C. §1391(b), where the acts and transactions giving rise to Plaintiffs' action occurred in this State and this district, where Plaintiffs reside in this State and this district, and where Defendant transacts business in this State and this district.

PARTIES

4. Plaintiffs, Jared Sermon and Jamie Sermon (“Plaintiffs”), are natural persons who at all relevant times resided in the State of Idaho, County of Canyon, and City of Nampa.

5. Plaintiffs are “consumers” as defined by 15 U.S.C. § 1692a(3).

6. Defendant, I.Q. Data International, Inc., ("Defendant") is a corporation who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a "debt" from Plaintiffs, as defined by 15 U.S.C. §1692a(5).

7. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

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2 **FACTUAL ALLEGATIONS**

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5 8. Plaintiffs are natural persons obligated, or allegedly obligated, to pay

6 a debt owed or due, or asserted to be owed or due a creditor other than Defendant.

7

8 9. Plaintiffs' obligation, or alleged obligation, owed or due, or asserted

10 to be owed or due a creditor other than Defendant, arises from a transaction in

11 which the money, property, insurance, or services that are the subject of the

12 transaction were incurred primarily for personal, family, or household purposes.

13 10. Defendant uses instrumentalities of interstate commerce or the mails

14 in a business the principal purpose of which is the collection of any debts, and/or

15 regularly collects or attempts to collect, directly or indirectly, debts owed or due,

16 or asserted to be owed or due another.

17 11. On or about July 11, 2009, Defendant wrote Plaintiffs a letter in an

18 effort to collect from Plaintiffs an obligation, or alleged obligation, owed or due,

19 or asserted to be owed or due a creditor other than Defendant.

20 12. Shortly thereafter, Defendant began making and/or placing multiple

21 telephone calls to Plaintiffs' cellular telephone number, in effort to collect from

22 Plaintiffs an obligation, or alleged obligation, owed or due, or asserted to be owed

23 or due a creditor other than Defendant.

13. In addition to calling Plaintiffs' cellular telephone number, Defendant made and/or placed multiple telephone calls to Plaintiff Jamie Sermon's work telephone number regarding the alleged debt.

14. Plaintiff Jamie Sermon informed Defendant that such calls were inconvenient and violated her employer's policy, and asked Defendant to cease all phone calls to her work telephone number.

15. Defendant continued to call Plaintiff Jamie Sermon's work telephone number after being asked to cease said phone calls.

16. During these telephone conversations with Plaintiffs, within the thirty day dispute period, Defendant threatened to process a judgment immediately against both Plaintiffs if they did not enter into an acceptable payment plan or pay in full.

COUNT I: VIOLATION OF 15 U.S.C. § 1692e(5)

17. Plaintiffs incorporate by reference all of the preceding paragraphs.

18. Defendant violated 15 U.S.C. § 1692e(5) by threatening to take action which cannot legally be taken or that was not actually intended to be taken

19. Defendant threatened to process a judgment immediately against Plaintiffs when Defendant had no intention of doing so and only mentioned the judgment so as to induce Plaintiffs into paying the debt.

1 20. To the extent that Defendant intended to process a judgment
2 immediately against Plaintiffs, Defendant threatened to take action which cannot
3 legally be taken.
4

5 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

6 a) Adjudging that Defendant violated 15 U.S.C. § 1692e(5);
7
8 b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C.
9 §1692k, in the amount of \$1,000.00;
10
11 c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. §1692k;
12
13 d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in
14 this action;
15
16 e) Awarding Plaintiffs any pre-judgment and post-judgment interest as
17 may be allowed under the law;
18
19 f) Awarding such other and further relief as the Court may deem just
20 and proper.

21 **COUNT II: VIOLATION OF 15 U.S.C. § 1692g(b)**

22 21. Plaintiffs incorporate by reference all of the preceding paragraphs.
23
24 22. Defendant violated § 1692g(b) by overshadowing the disclosures
25 required by § 1692g(a) during the thirty day dispute period.
26
27

1 23. 15 U.S.C. § 1692g(a) requires debt collectors to disclose certain
 2 information to debtors within five days after the initial communication with a
 3 debtor. *See* 15 U.S.C. § 1692g(a)(1)–(5).
 4

5 24. 15 U.S.C. § 1692g(b) prohibits “[a]ny collection activities and
 6 communication during the 30-day period [that] overshadow or [are] inconsistent
 7 with the disclosure of the consumer’s right to dispute the debt . . .”
 8

9 25. A debt collector does not comply with section 1692g(a) “merely by
 10 inclusion of the required debt validation notice; the notice Congress required must
 11 be conveyed *effectively* to the debtor.” *Swanson v. Southern Oregon Credit Serv., Inc.*, 869 F. 2d 1222, 1225 (9th Cir.1988) (emphasis added). A collection letter,
 12 even should it track the statutory language of the FDCPA, “nonetheless violates
 13 the Act if it conveys that information in a confusing or contradictory fashion so as
 14 to cloud the required message with uncertainty.” *Meselsohn v. Lerman*, 485 F.
 15 Supp. 2d 215 (E.D. N.Y. 2007). Language is “overshadowing or contradictory if
 16 it would make the least sophisticated consumer uncertain as to her rights.”
 17 *Russell v. Equifax A.R.S.*, 74 F. 3d at 30 (2d Cir. 1996).
 18

23 26. Defendant overshadowed the disclosure required by § 1692g, in
 24 violation of § 1692g(b), by threatening to take legal action against Plaintiffs
 25 during the thirty day dispute period.
 26

1
2 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

3 a) Adjudging that Defendant violated 15 U.S.C. § 1692g(b);
4
5 b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C.
6 §1692k, in the amount of \$1,000.00;
7
8 c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. §1692k;
9
10 d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in
11 this action;
12
13 e) Awarding Plaintiffs any pre-judgment and post-judgment interest as
14 may be allowed under the law;
15
16 f) Awarding such other and further relief as the Court may deem just
17 and proper.

18 **COUNT III: VIOLATION OF 15 U.S.C. § 1692c(a)(3)**

19 27. Plaintiffs incorporate by reference all of the preceding paragraphs.

20 28. 15 U.S.C. § 1692c(a)(3) prohibits debt collectors from
21 communicating with a debtor at his or her "place of employment if the debt
22 collector knows or has reason to know that the consumer's employer prohibits the
23 consumer from receiving such communication."

1 29. Defendant violated § 1692c(a)(3) by continuing to call Plaintiff
2 Jamie Sermon's work telephone number after being informed by Plaintiff that the
3 calls were inconvenient and against the policy of Plaintiff's employer.
4

5 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

6 a) Adjudging that Defendant violated 15 U.S.C. § 1692c(a)(3);
7
8 b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C.
9 §1692k, in the amount of \$1,000.00;
10
11 c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. §1692k;
12
13 d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in
14 this action;
15
16 e) Awarding Plaintiffs any pre-judgment and post-judgment interest as
17 may be allowed under the law;
18
19 f) Awarding such other and further relief as the Court may deem just
20 and proper.

21 **COUNT IV: VIOLATIONS OF THE WASHINGTON FAIR DEBT
22 COLLECTION PRACTICES ACT, RCW § 19.16.250(12)**

23 30. Plaintiffs incorporate by reference all of the preceding paragraphs.

24 31. Defendant violated RCW § 19.16.250(12)(a) by calling Plaintiffs
25 more than three times in a single week.
26

1 32. Defendant violated RCW § 19.16.250(12)(b) by calling Plaintiff
2 Jamie Sermon's work number more than one time in a single week.

3 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:
4

- 5 a) Adjudging that Defendant violated RCW § 19.16.250(12)(a)–(b);
6 b) Awarding Plaintiffs statutory damages;
7 c) Awarding Plaintiffs actual damages;
8 d) Awarding Plaintiffs discretionary and treble damages;
9 e) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in
10 this action;
11 f) Awarding Plaintiffs any pre-judgment and post-judgment interest as
12 may be allowed under the law;
13 g) Awarding such other and further relief as the Court may deem just
14 and proper.
15

16 **COUNT V: VIOLATION OF THE WASHINGTON CONSUMER
17 PROTECTION ACT, RCW § 19.86**

21 33. Plaintiffs incorporate by reference all of the preceding paragraphs.
22

23 34. RCW § 19.16.440 provides that a violation under RCW § 19.16 (The
24 Washington Fair Debt Collection Practices Act) is a per se violation of RCW
25 19.86 (The Washington Consumer Protection Act).
26

1 35. Thus, having violated RCW § 19.16, Defendant is also in violation
2 of RCW § 19.86.

3 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:
4

- 5 a) Adjudging that Defendant violated RCW § 19.86;
- 6 b) Awarding Plaintiffs statutory damages;
- 7 c) Awarding Plaintiffs actual damages;
- 8 d) Awarding Plaintiffs discretionary and treble damages;
- 9 e) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in
10 this action;
- 11 f) Awarding Plaintiffs any pre-judgment and post-judgment interest as
12 may be allowed under the law;
- 13 g) Awarding such other and further relief as the Court may deem just
14 and proper.

Respectfully submitted this 13th day of July, 2010.

s/Jon N. Robbins
Jon N. Robbins
28991
WEISBERG & MEYERS, LLC
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Loon Lake ,WA 99148
509-232-1882
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DECLARATION OF SERVICE/MAILING

I, Jon N. Robbins, do hereby state under penalty of perjury under the laws of the State of Washington that on this date, I caused to be delivered a true and correct copy of this First Amended Complaint to the attorney for defendant, Michael S. O'Meara, through the Court's Electronic Filing system, to:

Michael S. O'Meara
I.Q. Data International, Inc.
1010 S.E. Everett Mall Way, Suite No. 100
Everett, WA 98208
WSBA No. 41502

SIGNED this 13th day of July, 2010, at Seattle, Washington.

/s/ Jon N. Robbins

Jon N. Robbins